

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER WEHDE,	§	
	§	No. 36, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0804024505
Appellee.	§	

Submitted: October 29, 2010

Decided: January 14, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 14th day of January 2011, upon consideration of the briefs on appeal and the Superior Court record, it appears to the Court that:

(1) The appellant, Christopher Wehde, filed this appeal from the Superior Court’s January 6, 2010 order denying his motion for reduction of sentence under Superior Court Criminal Rule 35(b) (“Rule 35(b)”). We have determined that there is no merit to the appeal. Accordingly, we affirm the judgment of the Superior Court.

(2) On January 21, 2009, Wehde pled guilty to one count each of sexual solicitation of a child, fourth degree rape and second degree conspiracy. On March 13, 2009, Wehde was sentenced, as a habitual

offender, to a total of nineteen years at Level V suspended after fifteen years minimum mandatory for decreasing levels of probation. Wehde challenged the sentence on direct appeal. The Court found no merit to the claims and affirmed the judgment of the Superior Court.¹

(3) On December 28, 2009, Wehde filed a motion for reduction of sentence under Rule 35(b) (“the motion”).² The Superior Court will consider a Rule 35(b) motion that is filed more than ninety days after the sentence is imposed “only in extraordinary circumstances”³ or pursuant to title 11, section 4217 of the Delaware Code, which is not applicable here.⁴

(4) In this case, the Superior Court denied the motion for several reasons, including that it was not filed within ninety days of sentencing.⁵ In his opening brief on appeal, Wehde argues that the Superior Court had an obligation to consider the motion as timely-filed due to his trial counsel’s failure to file a similar motion within ninety days of sentencing.

(5) Wehde did not raise his ineffective assistance of counsel claim in the motion. Absent plain error, the Court generally will decline to review a

¹ *Wehde v. State*, 983 A.2d 82 (Del. 2009).

² Wehde sought to reduce the fifteen-year minimum mandatory term of his sentence to a term of thirty months.

³ Del. Super. Ct. Crim. R. 35(b).

⁴ *Id.* Section 4217 establishes a procedure permitting the Department of Correction to apply for a modification of an offender’s sentence for good cause shown.

⁵ In addition, the Superior Court denied the motion on the basis that the sentence was imposed pursuant to a plea agreement and was otherwise appropriate.

claim on appeal that was not presented to the trial court.⁶ Wehde's claim does not raise plain error warranting further review.⁷

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁶ *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

⁷ *See Samuel v State*, 2010 WL 3245109 (Del. Supr.) (concluding that untimely Rule 35(b) motion citing alleged ineffective assistance of counsel as cause did not demonstrate exceptional circumstances that would justify consideration of motion).